

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

ALFRED BAKER,
Defendant.

No. CR-01-151-FVS

ORDER DENYING MOTION FOR
REDUCTION OF SENTENCE

THIS MATTER came before the Court for a hearing on the Defendant's Motion for Reduction of Sentence, Ct. Rec. 78, on July 15, 2008. Assistant United States Attorney Timothy J. Ohms appeared on behalf of the United States. Donald A. Kellerman appeared on behalf of the Defendant.

On July 10, 2002, the Defendant pled guilty to one count of Distribution of Cocaine Base. He came before the Court for sentencing on October 29, 2002. The Court adopted the conclusions of the PreSentence Investigation Report ("PSIR"), finding the Defendant's Base Offense Level to be 16 under U.S.S.G. § 2D1.1(c)(12). The Court also held that the Defendant qualified as a career offender under U.S.S.G. § 4B1.1, raising his Base Offense Level to 32 and placing him in Criminal History Category VI. Taking into account a reduction of three points for acceptance of responsibility and timely entrance of a plea, the Defendant's Guideline range came to 151-188 months. The Court accordingly sentenced him to 151 months imprisonment to be followed by 3 years supervised release.

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1 The Defendant now moves for a reduction in his sentence pursuant
2 to 18 U.S.C. § 3582(c)(2). Citing *United States v. Booker* and its
3 progeny, he argues that the Court should disregard its prior ruling
4 that the Defendant is a career offender and consider the factors set
5 forth in 18 U.S.C. § 3553(a). The 2007 amendment to U.S.S.G. § 2D1.1
6 reduces his base offense level from 16 to 12.

7 The Court concludes that it has no legal basis to resentence the
8 Defendant. 18 U.S.C. § 3582(c)(2) authorizes the Court to reduce a
9 defendant's sentence when his or her Guideline range has been reduced
10 by an amendment to the Sentencing Guidelines. However, such a
11 reduction is contrary to the policy of the Sentencing Guidelines when
12 the amendment in question "does not have the effect of lowering the
13 defendant's applicable guideline range." U.S.S.G. § 1B.10(a)(2)(B).
14 Here, the Defendant was sentenced pursuant to the career offender
15 guideline, U.S.S.G. § 4B1.1, rather than the recently-amended
16 guidelines for offenses involving cocaine, U.S.S.G. § 2D1.1. The 2007
17 amendment to Section 2D1.1 consequently has no effect upon his
18 Guideline range and relief is unavailable under 18 U.S.C. §
19 3582(c)(2). Accordingly,

20 **IT IS HEREBY ORDERED** that the Defendant's Motion for Reduction of
21 Sentence, Ct. Rec. 78, is **DENIED**.

22 **IT IS SO ORDERED.** The District Court Executive is hereby
23 directed to enter this order and furnish copies to counsel.

24 **DATED** this 21st day of July, 2008.

25 s/ Fred Van Sickle
26 Fred Van Sickle
Senior United States District Judge